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OFFICE OF PETITIONS

In re Application of	:	
Marcus P.L. Huinck	:	
Application No. 10/827,290	:	DECISION ON PETITION
Filed: April 20, 2004	:	
Attorney Docket No. 0142-0456P	:	

This is a decision on the petition filed October 13, 2004, requesting that the above-identified application be accorded a filing date of April 20, 2004.

The application was deposited on April 20, 2004. However, on June 30, 2004, Initial Patent Examination Division mailed a "Notice of Incomplete Application Nonprovisional Application", stating that the above-identified application was deposited without drawings, and stating that the filing date will be the date of receipt of the drawings. Additionally, the Notice required submission of an executed oath or declaration covering the omitted drawings.

In response, petitioner argues that the response filed August 30, 2004, was sufficient to explain the absence of drawings and that the application was perfected on September 21, 2004¹ with the filing of an executed Oath/Declaration and \$130 surcharge. Petitioner also states that the reference to Figure 3 in the specification is a typographical error and that the above-identified application was deposited without drawings.

Based on the statements made in the instant petition, which is signed by a registered practitioner, it appears that the reference in the specification to Figure 3 is a typographical error and that no drawing containing Figure 3 was intended to be filed on April 20, 2004. In support, petitioner filed an amendment on September 20, 2004, cancelling the reference to Figure 3 in the specification, along with a postcard receipt stamped by the USPTO, which shows that the application was deposited without drawings on April 20, 2004.

¹In order to make the response filed September 21, 2004 timely, petitioner submitted \$110 for a one (1) month extension of time.

In view of the above, the petition is **granted**. However, since the application as filed described a Figure 3, and no drawing labeled Figure 3 was present on April 20, 2004, the application was prima facie incomplete. See MPEP 506 and 608.01(f). Thus, the petition and the petition fee of \$130 are necessary to correct applicant's filing error. Therefore, the \$130 petition fee has been charged to petitioner's deposit account, as authorized.

The Notice mailed September 21, 2004, is hereby withdrawn.

This application is being referred to Technology Center Art Unit 1755, to await applicants' response to the non-final Office action mailed October 20, 2004.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (571) 272-3226.



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Brian Hearn
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